CARL J. TAFFERA

IBLA 82-1007 Decided February 22, 1983

Appeal from a decision of the California State Office, Bureau of Land Management, in part canceling lease CA 8854.

Reversed in part; affirmed in part.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Stipulations -- Secretary of the Interior

   The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest. However, if he decides to issue a lease, he may require the acceptance of stipulations reasonably designed to protect environmental and other land use values as a condition precedent to issuance of such a lease.

2. Contracts: Generally -- Oil and Gas Leases: Cancellation

   The signing of an oil and gas lease offer by the authorized officer of the Bureau of Land Management is the act that constitutes issuance of the lease and creates a binding contract. A subsequent decision not to issue oil and gas leases in an area will not support cancellation of a preexisting lease. Cancellation of a lease based on a post-lease event is limited to circumstances where there has been a statutory or regulatory violation or a violation of the lease terms.

APPEARANCES: Carl J. Taffera, pro se; V. C. McClintock, Esq., for Amoco Production Company; Francine J. Lane, Esq., for petitioner.

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OPINION BY ADMINISTRATIVE JUDGE HARRIS

Carl J. Taffera (appellant), joined in the appeal by Amoco Production Company, 1/ appeals from a decision dated May 28, 1982, issued by the California State Office of the Bureau of Land Management (BLM), canceling in part lease CA 8854. That decision provided:

> Some of the lands selected in this lease were withdrawn from all forms of appropriation under the public land laws, but not the mineral leasing laws, by Public Land Order 5694 of January 28, 1980, and designated as the Desert Tortoise Natural Area (DTNA), which is under intensive management by the Bureau of Land Management for the protection and enhancement of the habitat supporting the highest known density of the desert tortoise. Management of the DTNA is governed by the Desert Tortoise Natural Area Habitat Plan of 1979. The Plan specifies that land uses which may lead to habitat deterioration and cause unnatural habitat conditions will be eliminated or controlled. These activities include, but are not limited to, vehicle use, grazing, mining, and dumping. Oil and gas leasing within the DTNA is not compatible with management objectives as set forth in the habitat plan.
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> The issuance of an oil and gas lease under the Act of February 25, 1920, is a matter completely within the discretion of the Secretary of the Interior. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960). As a result of the foregoing, it appears that the proper exercise of this discretionary authority is to cancel that portion of lease CA 8854 within the DTNA.
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> Accordingly, the lease is hereby cancelled as to all but the following described lands:
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> Sec. 17, Lots 1 through 4, inclusive.
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> containing 89.11 acres
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> The decision of January 5, 198[2], is hereby modified to reject the lands selected in Section 18. The smallest legal subdivision which may be encompassed by oil and gas lease offer is a quarter-quarter section unless the offer is for a lot in a fractional section. The lands described in Section 18 are five-acre parcels which are contiguous to other lands available for leasing, which, if selected, would have satisfied this requirement.

1/ Amoco Production Company, asserting that it is a bona fide purchaser of certain rights and interests in and to the lease, joins in the notice of, and statement of reasons for, appeal. Given our disposition of this case, we need make no ruling on Amoco's claim of bona fide purchaser status.

The January 5, 1982, decision noted that appellant's noncompetitive oil and gas lease offer CA 8854 had been filed on October 29, 1980, for land within T. 30 S., R. 38 E., Mount Diablo meridian. That decision forwarded to appellant certain stipulations the acceptance of which by appellant was a necessary precondition to issuance of any lease. Appellant accepted the stipulations and a lease was issued effective March 1, 1982. 2/ Stipulations 2 and 3 provided that prior to any surface-disturbing activity an environmental analysis would be made to insure proper protection of the surface, the natural and cultural resources, the environment, existing improvements, and for assuring timely reclamation of disturbed lands. Stipulation 3 specifically provided that upon completion of the environmental analysis, BLM would notify lessee of the conditions, if any, to which the proposed surface-disturbing operations would be subject. It was further provided that the conditions could relate to the location of drilling or other exploratory or developmental operations or the manner in which they were to be conducted; the types of vehicles that could be used and the areas in which they could be used; and the manner or location in which improvements such as roads, buildings, pipelines, or other improvements were to be constructed.

Section 9 of the stipulations signed by appellant prior to issuance of the subject lease provides:

> The leased lands may be in an area suitable for the habitat of threatened or endangered plant and animal species. All viable habitat of these species will be identified for the lessee by the authorized officer of the Bureau of Land Management during the preliminary environmental review of the lessee's proposed surface disturbing activity. This analysis may also include * * * consultation * * * to determine whether or not the proposed activity would jeopardize the continued existence of these species [see Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536)]. This process may result in some restrictions to the lessee's plan of development, or even disallow surface disturbance. * * * [Emphasis added.]

2/ The lands covered by lease CA 8854 are as follows:
Township 30 South, Range 38 East MDM
Section 15: Lots 1-4 inclusive (679.38 acres)
Section 16: All (640 acres)
Section 17: Lots 1-4 inclusive (89.11 acres)
Section 18: W 1/2 NW 1/4 NE 1/4 SW 1/4, W 1/2 NE 1/4 SE 1/4 SW 1/4,
W 1/2 SE 1/4 SE 1/4 SW 1/4 (15 acres)
Section 20: N 1/2 (320 acres)
Section 21: Lots 1-5 inclusive (509.17 acres)
Section 22: Lots 1-7 inclusive (682.55 acres)
Section 23: Lots 1-12 inclusive (537.98 acres)
Section 24: Lots 1-16 inclusive (656.02 acres)
Section 26: Lots 1-5 inclusive (648.53 acres)
Section 27: Lots 2-6 inclusive (455.41 acres)
Section 28: Lots 1-6 inclusive (593.85 acres)
Section 34: S 1/2 (320 acres)
Total 6,147 acres

Appellant agrees that issuance of a noncompetitive oil and gas lease is within the discretion of the Secretary of the Interior; however, appellant contends that in the present situation cancellation of a validly issued existing lease is not proper, where the lessee has not violated any of the lease terms and where there is a bona fide purchaser of certain rights and interests in the lease. Appellant makes no arguments concerning that portion of the May 28, 1982, decision which "rejected" the lands selected in section 18. 3/

The question presented by this appeal is whether BLM may cancel a lease for certain lands where it makes a subsequent management decision not to lease in that area. In this case BLM issued the lease in question effective March 1, 1982. In May 1982 BLM completed an "Environmental Assessment for Proposed Oil and Gas Leasing in the Desert Tortoise Natural Area" (EA).

In the Decision Record accompanying the EA, BLM listed four alternatives concerning oil and gas leasing in the natural area. Those options were leasing with no surface occupancy, leasing with seasonal restrictions, leasing only a portion of the area, and no leasing. BLM chose no leasing. In explanation, BLM stated:

> b. Rationale. Environmental impacts associated with the proposed action cannot be reduced to acceptable levels through mitigation that would be compatible with the management objectives the BLM has established for the DTNA.
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> Furthermore, the alternative actions involving reduced levels or intensities of surface occupancy are incompatible with

3/ On Nov. 8, 1982, the Desert Tortoise Preserve Committee, Inc. (Committee), filed a petition to intervene in this matter. In support of its petition the Committee states that it is a nonprofit California corporation which, since 1974, has worked with BLM to establish and develop the Desert Tortoise Natural Area; that the BLM has acknowledged the active role of the Committee; that the Committee has raised thousands of dollars to permit land exchanges involving private property within the natural area; that the Committee conducts tours and educational programs about the unique desert habitat; and that the interest of the Committee in actions that threaten the natural area is immediate, direct, and substantial. Finally, the Committee asserts that it did not learn about the Taffera lease until Sept. 23, 1982.

A copy of the certificate of mailing accompanying the petition, signed by counsel for the Committee, does not show service on appellant. Likewise, a subsequent inquiry by counsel for the Committee does not show service on appellant. The regulations, 43 CFR 4.22(b), require that a copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case. Ordinarily, we would require service on appellant; however, such an order in this case would merely delay issuance of our decision and would have no impact on the result since we can conceive of no argument that could be raised by the Committee that would overcome the legal obstacle to cancellation of the lease. For the reasons stated, we take no action on the petition.

> the BLM management objectives for the DTNA. The alternative of leasing with no surface occupancy, while compatible with the management objectives for the DTNA because of no resulting surface impacts, is not a viable option. Selection of this alternative implies that some degree of oil and gas exploration and production would be allowed on Public Lands. Since this alternative would not allow surface access to any of the Public Lands, it is rejected and the alternative action of no leasing is selected. This rationale is supported in the decision by the Interior Board of Land Appeals (IBLA 74-278; Bill J. Maddox).

Section V of the EA itself discussed the "Relationship of the Proposed Action and Alternatives to Land Use Plans and Classifications" and provided: "The proposed action and alternatives, except no leasing or lease with no surface occupancy, are not compatible with BLM management objectives. The CDCA Final Plan affirms the value and need for continued management of the DTNA for wildlife habitat protection." (Emphasis added.)

[1] The Secretary of the Interior, through BLM, has the discretion to refuse to issue oil and gas leases even where the lands have not been withdrawn from the operation of the mineral leasing laws. Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1965). Should, however, the Secretary decide to issue a lease, he may require the execution of special stipulations to protect environmental and other land use values. Vern K. Jones, 26 IBLA 165 (1976); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1.

> [2] In Barbara C. Lisco, 26 IBLA 340, 344 (1976), the Board stated:
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> The Department has recognized that upon signature of a lease by both parties, it becomes a binding instrument and cannot be vitiated by unilateral action, all else being regular. Charles D. Edmondson, et al., 61 I.D. 355, 363 (1954). See Stephen P. Dillon, et al, 66 I.D. 148, 150 (1959); R. S. Prows, 66 I.D. 19, 21 (1959). 3/

> 3/ "The Government's rights and obligations as lessor of public lands are no different from those of any other lessor. United States v. General Petroleum Corp., 73 F. Supp. 225, 234 (S.D. Cal. 1946), aff'd, Continental Oil Co. v. United States, 184 F.2d 802 (9th Cir. 1950). The rules of construction applicable to Government contracts are the same rules applied to contracts between private parties. * * *" Standard Oil Co. of California v. Hickel, 317 F. Supp. 1192, 1197 (D. Alaska 1970), aff'd per curiam, 450 F.2d 493 (9th Cir. 1971).

The Secretary generally has the authority to cancel any oil and gas lease for violations of the Mineral Leasing Act and regulations thereunder, as well as for administrative errors committed prior to lease issuance. Boesche v. Udall, 373 U.S. 472 (1963); Bernard Kosik, 70 IBLA 373 (1983).

The record does not disclose any prelease administrative errors that would require the partial cancellation of the lease in question. 4/ In addition, there is no evidence of any statutory or regulatory violations that would support cancellation. Apparently, the only basis for cancellation is that subsequent to lease issuance BLM compiled an EA and decided that no leases should issue in the natural area. The determination not to lease is supported by the record. If appellant's offer were still pending, the record would justify rejection of his offer. However, appellant has a lease. BLM may not retroactively apply its no lease determination to deprive appellant of his lease. Cancellation of an oil and gas lease for a post-lease event is limited to circumstances where there has been a statutory or regulatory violation or a violation of lease terms. 30 U.S.C. § 188(a), § 188(b), § 184(h)(1) (1976); Boesche v. Udall, supra at 478; see 43 CFR 3112.6-3. None of those circumstances exist in this case, therefore, BLM's cancellation based on the subsequent determination not to lease was improper.

The BLM decision indicates that oil and gas leasing is not consistent with the management objectives set forth in the Desert Tortoise Natural Area Habitat Management Plan of 1979 (Plan). We have reviewed the Plan. It states in relevant part:

> B. Habitat Management
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> Land use activities which may cause habitat deterioration and promote unnatural conditions will be eliminated or controlled. These activities include vehicle use, grazing, mining, dumping, and other uncontrolled human activities.

(Plan at 2). The plan does not specifically address oil and gas leasing. We cannot find that the plan foreclosed leasing in the natural area.

Appellant did, however, at the time of lease issuance agree to certain stipulations which acknowledged that an EA would be prepared and that the leasehold might be subject to further restrictions. In fact, stipulation 9 indicated that in certain circumstances BLM might even disallow surface disturbance. We note that BLM stated in the May 1982 EA that leasing with no surface occupancy would be compatible with BLM management objectives.

4/ The exception is for acreage in section 18. BLM apparently cancelled the lease as to the acreage (15 acres) described in this section because it was leased in error. Although the BLM decision uses the word "reject," the acreage in section 18 was part of the lease and as such could not be rejected. BLM properly cancelled the lease as to this acreage. The three 5-acre parcels described are contiguous to other lands available for leasing. An offer which describes lands in parcels smaller than a quarter-quarter section may be accepted only if it contains all the lands available for leasing within a quarter-quarter section. Elliott A. Riggs, 65 IBLA 22 (1982).

The BLM decision, to the extent it cancelled CA 8854 because of incompatibility with management objectives in the natural area, must be reversed. However, when the lessee proposes to engage in any surface-disturbing activities, BLM may impose reasonable restrictions on surface disturbance consistent with the stipulations to which appellant agreed or take other appropriate action. To the extent the BLM decision cancelled CA 8854 for lands in section 18, it is affirmed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge